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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,327	02/26/2002	John M. Garth	SVL920010089US1 0920.0018	3782

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EXAMINER	
ROBINSON, GRETA LEE	
ART UNIT	**PAPER NUMBER**
2168	

DATE MAILED: 12/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/082,327	GARTH ET AL.	
	Examiner	Art Unit	
	Greta L. Robinson	2168	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 September 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-36* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-22,24,26 and 28-36* is/are rejected.

7)☒ Claim(s) *23,25 and 27* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. In view of the Appeal Brief filed on September 21, 2005, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-22, 24, 26, and 28-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lipa et al. US patent 6,061,722 in view of Sekine US Patent 6,269,359 B1 and IBM Technical Disclosure Bulletin *Method of Sharing an Intelligent Progress Bar Across Remote Machines* (herein IBM).

Regarding claim 1, **Lipa et al.** teaches a method for predicting the time required to execute a database command [note: "system and method of measuring network performance ... The system and method take into account factors such as latency; bandwidth; CPU performance ... performance tests are repeated over a period of time in order to better estimate the trends and to better predict changes in performance characteristics over time" abstract; col. 2 lines 3-5], comprising:

measuring a plurality of execution times to complete the database command [note: "performance tests are repeated over a period of time in order to better estimate the trends and to better predict changes" abstract; col. 12 lines 7-8 "measuring a transmission time of each accepted ping reply packet"; also col. 1 lines 40-46 and col. 2 lines 7-29 and lines 56-59]. Although Lipa et al. teaches the invention substantially as

cited above, they do not explicitly teach recording the measured execution times, thereby creating a time historical record; and using the time historical record to estimate the time required to execute the database command. Sekine teaches storing execution procedure (i.e. recording the measured execution time) and using the stored execution procedure to estimate response time [note: Flowchart Figure 7A steps S13 through S15; abstract; col. 7 lines 28-34 *a storage structure definition means* 31; col. 8 lines 30-34 logical structure definition means 30; also note col. 5 lines 15-53 and col. 6 lines 35-63]. It would have been obvious to one of ordinary skill at the time of the invention to have combined Sekine with Lipa et al. because Sekine depicts the logical storage structure (i.e. storage or history table) which would hold estimated trends taught in Lipa et al. for predicting network performance. Although Sekine teaches recording measured execution times and storage of the measured times; he does not explicitly state that the logical storage structure is a historical record. IBM teaches a history table is maintained on the network for holding monitored execution durations [note page 427]. It would have been obvious to one of ordinary skill at the time of the invention to have combined the cited references because the logical storage structure of Sekine performs the same function as a historical table and would hold estimated trends taught in Lipa et al. for predicting network performance.

4. Regarding claims 2-4, wherein said using the time historical record includes analyzing the time historical record by using a statistical analysis technique to estimate the time required to execute the database command ... includes computing an average

time [note: IBM teaches an initial estimation and average note page 427; also Lipa et al. is concerned with obtaining the best estimate through repeated performance tests col. 7 lines 1-18].

5. Regarding claims 7-9, 12-14, wherein said analyzing the time historical record includes computing a maximum execution time ... [note: IBM page 427-428 user can configure time interval and system is configurable for notification].

6. Regarding claims 10, 11, 15 and 16 issuing a warning ...[IBM page 427-428 user can configure time interval and system is configurable for notification].

7. Regarding claims 17-22, wherein the database command is a database utility command [note: Lipa et al. provides for various environments col. 1 line 60 through col. 2 line 5].

8. Regarding claims 24 and 26, further comprising determining if a plurality of database commands can execute within a fixed timeframe by analyzing each of the plurality of commands ... wherein said database command is a command file containing a plurality of database commands [note: Lipa et al. central monitor process 128 col. 4 lines 4-7; and Sekine Figure 7A step S15 and col. 5 lines 15-53].

9. Regarding claim 28, Lipa et al. teaches "predicting the time required to execute a database command" note abstract. Lipa et al. teaches an "analysis module" configured to analyze the measurements recorded note central monitor process 128 col. 5 lines 20-30 and col. 12 lines 7-8. Lipa et al. does not specifically show a historical record module or a utility module. However Sekine teaches logical storage definition means for defining a storage structure and table definition management 16 [note: col. 7 lines 27-36]. It would have been obvious to one of ordinary skill at the time of the invention to have combined Sekine with Lipa et al. because Sekine depicts the logical storage structure which would hold estimated trends taught in Lipa et al. for predicting network performance. Although Sekine teaches recording measured execution times and storage of the measured times; he does not explicitly state that the logical storage structure is a historical record. IBM teaches a history table is maintained on the network for holding monitored execution durations [note page 427]. It would have been obvious to one of ordinary skill at the time of the invention to have combined the cited references because the logical storage structure of Sekine performs the same function as a historical table and would hold estimated trends taught in Lipa et al. for predicting network performance.

10. The limitations of claims 29-36 have been addressed above; therefore they are rejected under the same rationale.

Allowable Subject Matter

11. Claims 23, 25 and 27 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

12. Applicant's arguments, see pages 11-21, filed September 21, 2005, with respect to the rejection(s) of claim(s) 1-36 under 35 USC 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Lipa et al., Sekine and IBM Technical Disclosure Bulletin Method of Sharing an Intelligent Progress Bar Across Remote Machines.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

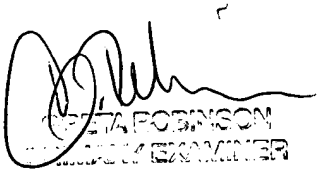
Carino Jr. US Patent 6,353,818 B1

Eberhard et al. US Patent 5,734,884

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greta L. Robinson whose telephone number is (571)272-4118. The examiner can normally be reached on M-F 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Gaffin can be reached on (571)272-4146. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Greta Robinson
Primary Examiner
November 29, 2005